SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. McKNETT, PETITIONER,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

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[fols. a–1] [Caption omitted]

IN CIRCUIT COURT OF JEFFERSON COUNTY

ROBERT J. McKNETT, Plaintiff,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, a Corporation, Defendant

[fol. 2] SUMMONS—Filed Jan. 20, 1932

THE STATE OF ALABAMA,
Jefferson County:

CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

To Any Sheriff of the State of Ala[illegible], Greeting:

You are hereby commanded to summon St. Louis & San Francisco Railway Company, a corporation, to appear before Circuit Court, to be held for said County at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of Robert J. McKnett.

Witness my hand, this 20 day of January, 1932.

Geo. Whitfield, Clerk.

IN CIRCUIT COURT OF JEFFERSON COUNTY

COMPLAINT—Filed Jan. 20, 1932

Count One

The plaintiff claims of the defendant the sum of One Hundred Fifty Thousand and no/100 ($150,000.00) Dollars as damages for that heretofore on, to-wit, September 1st, 1931, the defendant was a body corporate and was a common carrier by railroad, and, as such common carrier, was engaged in interstate commerce by railroad in the City of Memphis, in the State of Tennessee, among other places, that is, the defendant at said time and place was engaged in transporting by a railroad commerce or freight originating in one State and consigned to and moving to another

and different State; and, on to-wit, the 1st day of September, 1931, the plaintiff was in the employment of the defendant as a yard conductor or foreman, and while acting within the line and scope of his employment by the defendant, and while engaged in such interstate commerce for the defendant in moving several cars of freight from the defendant's yards at or near Georgia Street, in Memphis, Tennessee, to the yards of the N. C. and St. L. located just [fol. 3] East of Main Street in Memphis, Tennessee, one or more of which cars contained commerce or freight originating in one State and destined to and consigned to another State, and while the plaintiff, then acting in the line and scope of his employment by the defendant, was in the act of disembarking from one of the said cars, which was then in motion, the defendant so negligently conducted its said business that as a proximate consequence thereof the plaintiff was hurt and injured as follows: The plaintiff fell from, to-wit, the top of one of the said cars to the track below while the said cars were in motion, the plaintiff's left hand was cut off, making necessary the amputation of the left arm just below the elbow, and the plaintiff was bruised and contused about his head and shoulders and chest and other parts of his body, and the plaintiff was shocked and his nervous system impaired, and the plaintiff was internally injured and was permanently injured, and he was caused to suffer great physical pain and mental anguish, and will in the future continue to suffer great physical pain and mental anguish, and the plaintiff was put to great expense for medicine, doctors' bills and hospital bills in and about the treating and curing and the effort to treat and cure, his said wounds and injuries, and he was caused to lose much time from his employment, and to lose the remuneration which he would have received therefrom, and he was permanently crippled and deformed, and rendered permanently less able to work and earn a livelihood for the balance of his life.

And the plaintiff avers that all of his said wounds and injuries and damages, hereinabove set forth, arose as the proximate result of the negligence of the defendant, which said negligence consisted in this, to-wit: The defendant, at the said time and at the said place and on the said occasion, while transporting freight by railroad in interstate commerce, so negligently conducted its said business as

to cause the plaintiff, as a proximate consequence of the said negligence, to fall from the top of a freight car to the ground and underneath the said freight car and to receive the said injuries and damages hereinabove set forth. Hence this suit.

And the plaintiff avers that on, to-wit, September the 1st, 1931, and, to-wit, on the date of the filing of this suit, the defendant was doing business in Jefferson County, Alabama.

London, Yancey & Brower, as Attorneys for the Plaintiff.

[fol. 4] NOTE.—The plaintiff demands a trial of this cause by a jury.

London, Yancey & Brower, as Attorneys for the Plaintiff.

Referred to Walter Brower.

SHERIFF'S RETURN

Executed this the 23 day of Jan. 1932, on St. Louis & San Francisco Railway Company, a corporation, by leaving a copy of within with A. Smith, Agent of said Company.

Jas. F. Hawkins, Sheriff, Jefferson Co., Ala. by J. W. Williams, D. S.

[File endorsement omitted.]

IN CIRCUIT COURT OF JEFFERSON COUNTY

PLEA IN ABATEMENT—Filed Feb. 9, 1932

Now comes the defendant in the above entitled cause and says that plaintiff ought not to have and maintain said action for that it affirmatively appears from the averments of plaintiff's complaint that the cause of action set out therein did not accrue or arise in the State of Alabama, but accrue or arise in the State of Tennessee, and that said cause of action did not arise either under the Common Law or by virtue of any statute of the State of Tennessee, but arose under or by virtue of an Act of the Congress of the United States commonly known as the Federal Employers' Liability Act.

Wherefore, defendant prays that this suit be abated and that defendant go hence without a day.

St. Louis-San Francisco Railway Company, by Cabaniss & Johnston, Its Attorneys.

[fol. 5] *Duly sworn to by M. G. Cooper. Jurat omitted in printing.*

IN CIRCUIT COURT OF JEFFERSON COUNTY

DEMURRER TO DEFENDANT'S PLEA IN ABATEMENT—Filed Jan. 16, 1933

Comes the plaintiff in the above styled cause and demurs to the defendant's plea in abatement and for grounds of said demurrer sets down and assigns, separately and severally, the following, to-wit:

1. For that the said plea does not in anywise constitute a defense to the plaintiff's complaint.

2. For that the facts set forth in the said plea do not as a matter of law present any legal basis wherein and whereby the Circuit Court of the Tenth Judicial Circuit of Alabama does not have jurisdiction of the cause of action.

3. For that the said plea does not present in its averments any facts which prevent the Court from having jurisdiction of the cause of action.

4. For that it affirmatively appears from the said plea that the cause of action which the plaintiff sues on arose under the laws of a state other than the State of Alabama.

[fol. 6] 5. For that it affirmatively appears from the said plea that the cause of action which the plaintiff sues upon is one in tort which accrued in another state other than the State of Alabama.

6. For that the said plea does not aver that the cause of action sued upon did not accrue or arise under the statutes of the State of Alabama and did not arise under the statutes of another state.

7. For that it affirmatively appears from the said plea that the cause of action is in tort and arises under the statutes of another state, within the meaning of the word

"State" as used in Section 5681 of the Code of Alabama of 1923.

8. For that it is not averred in the said plea that the Court does not have jurisdiction of the defendant.

9. For that no facts are set forth in the said plea showing that the Court does not have jurisdiction of the defendant.

10. For that the said plea does not in anywise controvert or answer the allegation in the complaint to the effect that on, to wit, September 1st, 1931, and on, to-wit, the date of the filing of this suit, the defendant was doing business in Jefferson County, Alabama.

11. For that from aught that appears to the contrary from the said plea the defendant owned and operated a railroad in the State of Alabama and in Jefferson County, Alabama, at the time of the accrual of the cause of action and at the time of the filing of this suit, and no denial thereof is made in the said plea.

12. For that no facts are averred in the said plea demonstrating or tending to show that this Court does not have jurisdiction of the defendant, and no facts are averred in the said plea demonstrating or showing that this Court would not have jurisdiction of a cause of action which accrued in the State of Tennessee arising out of the so-called Federal Employers' Liability Act.

13. For that it affirmatively appears from the said plea that every fact necessary to the jurisdiction of this Court of the said cause of action existed.

14. For that the said plea in legal effect confesses jurisdiction of this Court of the said cause of action.

15. For that the said plea in effect admits that the cause of action accrued in the State of Tennessee and arose as a [fol. 7] cause of action in tort under and by virtue of an act or statute of the United States commonly known as the Federal Employers' Liability Act, and the said plea does not deny that this Court has jurisdiction of the defendant.

16. For that it does not appear from the said plea that the defendant is a foreign corporation.

17. For that it does not appear that the plaintiff is a non-resident of the State of Alabama.

London, Yancey & Brower, Attorneys for the Plaintiff.

[File endorsement omitted.]

IN CIRCUIT COURT OF JEFFERSON COUNTY

JUDGMENT—Jan. 16, 1933

On this the 16th day of January, 1933, this cause being reached on the docket and called for trial, came the parties by their attorneys, and plaintiff demurs to the defendant's special plea entitled plea in abatement; and said demurrers to plea in abatement are by the Court heard and considered, whereupon,

It is ordered and adjudged by the Court that said demurrers be and they are hereby overruled; plaintiff, by reason of adverse rulings of the Court, takes a non-suit, and moves the Court for an order accordingly, whereupon,

It is ordered and adjudged by the Court that a non-suit be and the same is hereby entered in accordance with plaintiff's motion, and that the defendant go hence without day and have and recover of the plaintiff all costs herein accrued for which execution may issue.

Bond on appeal approved and filed Jan. 28, 1933 omitted in printing.

[fol. 8] Citation in usual form showing service on Cabaniss & Johnston omitted in printing.

[fol. 9] Clerk's certificate to foregoing transcript omitted in printing.

[fo]. 10] In Supreme Court of Alabama, Sixth Division, October Term, 1932-1933

No. —

Robert J. McKnett, Appellant,

vs.

St. Louis & San Francisco Railroad Company, a Corporation, Appellee

Appeal from the Circuit Court of the Tenth Judicial Circuit of Alabama.

Assignment of Errors

Now comes the Appellant in the above entitled cause and says that there are manifest errors in the foregoing record of proceedings had and done in the Circuit Court of the Tenth Judicial — of Alabama to the hurt and prejudice of this Appellant, and for Assignment of Errors sets down and assigns the following, separately and severally, to-wit:

1. For that the court erred in overruling the demurrers of the appellant to the plea in abatement of the complaint (R. p. 7).

2. For that the court erred in failing to sustain the appellant's demurrer to the plea in abatement of the complaint (R. p. 7).

(Signed) London, Yancey & Brower, Attorneys for Appellant.

[fols. 11 & 12] Order of submission, April 18, 1933, omitted in printing.

[fol. 13] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1932-33

6 Div. 321

ROBERT MCKNETT

vs.

ST. LOUIS AND SAN FRANCISCO RAILWAY CO.

Appeal from Jefferson Circuit Court

OPINION—June 9, 1933

FOSTER, J.:

This action is alleged to have arisen in Tennessee under the Federal Employers' Liability Act against appellee, a foreign corporation doing business in Alabama, as an interstate carrier. Defendant pleaded in abatement that the cause of action did not arise in Alabama, and that it did not exist either by authority of the common law or the statutes of Tennessee, but arose under the Federal Employers' Liability Act, and that section 5681, Code, did not apply, and the courts of Alabama had no jurisdiction. [fol. 14] By its terms that section only applies to actions which arose in another state either by common law or the statutes of that state. While the Federal Employers' Liability Act is a statute which is effective in Tennessee, as elsewhere in the several states, it was not enacted by the legislature nor by any constitutional convention of that state; nor is its effectiveness there dependent upon any sort of state action or recognition. It is wholly beyond the authority of the state that it is a law.

We do not therefore think that the legislature of Alabama in enacting what is section 5681, Code, intended that its language should have a meaning broader than that ordinarily to be understood by its common or general use. Since the cause of action is not there included, the plea in abatement is available, for prior to the authority of that enactment, it was held that an action on a claim which did not arise in Alabama could not be maintained in its courts against a foreign corporation without its consent.—C. R. R. & B. Co. v. Carr, 76 Ala. 388; Pullman Palace Car Co. v. Harrison, 122 Ala. 149, 25 So. 697; Dozier Lumber Co. v.

Smith, etc., Lumber Co., 145 Ala. 317, 30 So. 714; Southern Railway Co. v. Jordan, 192 Ala. 528, 68 So. 418. Such was the ruling of the circuit court, and it is affirmed.

Affirmed.

All the Justices concur.

[fol. 15] IN SUPREME COURT OF ALABAMA

6 Div. 321

McKNETT

v.

S. L. & S. F. R. R.

OPINION ON REHEARING—Oct. 12, 1933

Per CURIAM:

We are of the opinion the conclusion reached in the original opinion is correct. The authorities cited therein, which need no repetition here, demonstrate that the matter of jurisdiction is dependent upon section 5681, Code 1923, which for convenience is here reproduced:

"Whenever, either by common law or the statute of another state, a cause of action, either upon contract, or in tort, has arisen in such other state against any person or corporation, such cause of action shall be enforcible in the courts of this State, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this State."

We are concerned first with the proper construction of this statute. It is the general rule that words in common use are to be given their natural, plain, ordinary and commonly understood meaning—Edwards v. Doster-Northington Drug Co., 214 Ala. 640; 59 Corpus Juris 975.

The words of the above noted section, upon which rests the question of jurisdiction in this particular case, are "the statutes of another state," and the case turns upon the true meaning hereof. It has been expressly held, and we think correctly so, that the natural meaning of "statute

of a state," is a statute or law enacted directly by the legislature of the state. Discussing a statute in which these words were used, the court in Cumberland Tel. & Tel. Co. v. City of Memphis, 198 Fed. 955, said: "The natural meaning of 'statute of a state' is a statute or law directly passed by the legislature of the state, and the natural meaning of 'any officer of such state,' is an officer whose authority extends throughout the state, and is not limited to a smaller [fol. 16] district; * * * and that Congress used these phrases with their natural meaning, rather than with the broader and less obvious meaning which trained lawyers might find therein." Giving therefore to the words 'statute of another state" their natural meaning (and we find nothing upon which to base a contrary interpretation) a federal statute is excluded.

The dissenting view appears to rest upon the assumption that such an interpretation would run counter to the intent of Congress and would not harmonize with the cases of Mondou v. N. Y., N. H. and H. R. R. Co., 223 U. S. 1; Murnan v. Wabash Rwy. Co., 246 N. Y. 244, and Walton v. Pryor, 276 Ill. But we think this is a mistaken interpretation of these authorities.

It must first be noted that the question whether the circuit court had jurisdiction is to be determined by the Consitution and laws of this State creating the courts and defining and limiting their jurisdiction. There is no restriction of the Federal Constitution upon the power of a state to determine the limits of the jurisdiction of its courts, except that the state must give to the citizens of other states the same rights that it accords to its own citizens.

So far as concerns this case, therefore, the authority of the state through its legislature to limit its jurisdiction, as above indicated, is well established, for, as said by the United States Supreme Court in St. L. & S. F. R. R. Co. v. Taylor, 210 U. S. 281, "Each state may subject to the restrictions of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them, and specifically how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders." And to like effect was the holding in Chambers v. B. & O. R. R. Co., 207 U. S. [fol. 17] 142, all of which was fully discussed by the Illinois case of Walton v. Pryor, supra, wherein the Mondou

case, supra, is considered, and wherein it is pointed out that Congress had no authority and made no effort to prescribe the jurisdiction of a state court. That was a matter for the state and the state only, and presenting no federal question. And as further illustrating this fact, the Illinois court quotes and comments upon the Mondou case as follows:

"One of the questions considered by the Supreme Court of the United States was this: 'May rights arising under those regulations be enforced as of right in the courts of the states when their jurisdiction as fixed by local laws is adequate to the occasion?' On that question the court said: 'There is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect the modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. We say "when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion," because we are advised by the decisions of the supreme court of errors that the superior courts of the state are courts of general jurisdiction, are empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction not only in cases where the right of action arose under the laws of that state, but also in cases where it arose in another state and under its laws and in circumstances in which the laws of Connecticut gave no right of recovery.' The court being advised that the courts of Connecticut had jurisdiction of actions for personal injuries and for death in cases where the right of action arose under the laws of that state, and also in cases where it arose in another state and under the laws of the other state where the laws of Connecticut gave no right of recovery, held that the courts of that state were bound to exercise the same jurisdiction to enforce a liability under the federal act.

[fol. 18] "Section 6 of the federal act, as amended in 1910, contains this provision: 'The jurisdiction of the courts of the United States under this act shall be concurrent with

that of the courts of the several states, and no case arising under this act and brought in any state of competent jurisdiction shall be removed to any court of the United States.' In view of the powers of the federal government and the states and in the light of the uniform decisions relating to the subject, this provision can only mean that when the jurisdiction of the courts of a state as fixed by local laws empowers them to hear and determine a certain class of actions, an action of that class arising under federal law may be enforced as of right in the state court. * * *

"The Supreme Court of the United States has said that there has been no attempt of Congress to enlarge the jurisdiction of the state courts but only to require its exercise consistently with local laws, and the enforcement of liability for damages occasioned by a death outside of the state is not consistent with such laws."

And the Court of Appeals of New York in Murnan v. Wabash Rwy. Co., supra, likewise makes it clear that the jurisdiction of the state courts is a matter for the state to determine, and that Congress had no right and made no attempt to invade such powers of the state. The court there points out that in all tort cases where one non-resident sues another under the laws of another state, the courts of that state exercise a discretion as to whether or not the suit will be entertained. The Appellate Division had held that the Federal Employers' Liability Act, which recognized concurrent jurisdiction in the state court, made it mandatory upon the state court not to refuse to exercise its jurisdiction in any case brought under the Act. But the Court of Appeals repudiated this holding and ruled that the state court would entertain jurisdiction only as it did in any other case and that such action is to be governed solely by the law of the state. Answering the opinion of the Appellate Division the Court of Appeals said:

[fol. 19] "It relied on the case of Mondou v. N. Y., N. H. and H. R. R. Co., (223 U. S. 1). The case is authority for the bare proposition that where the state courts would exercise their jurisdiction except for the fact that the action is brought under the act of Congress, they may not refuse to exercise jurisdiction because the action is brought under the laws of the United States. The court said: 'The existence of the jurisdiction creates an implication of duty

to exercise it * * *. We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion.'

"This general language read in connection with what was actually decided means nothing more than that the state courts must make no hostile discrimination against litigants who come within the act in question; that they must treat litigants under the federal acts as other litigants are treated; that they are to act in conformity with their general principles of practice and procedure and are not to deny jurisdiction merely because the right of action arises under the act of Congress.

"The court seems to make this meaning clear. It says in substance that it is advised by decisions of the Supreme Court of Errors that the Superior Court of the state of Connecticut are not only empowered to take cognizance of actions to recover for personal injuries and death but are accustomed to exercise that jurisdiction in cases where the right of action arises under the laws of another state. It says further: 'We deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the Act of Congress and susceptible of adjudication according to the prevailing rules of procedure.'

The courts of New York exercise their discretion in all other cases where a tort action is brought by one non-resident against another under the laws of another state. The practice may be anomalous but it is well established. That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary, seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the Federal Employers' Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing

under the act of Congress. He may not enforce his rights merely because he is suing under the act."

[fol. 20] The Mondou case, supra, as stressed by the Illinois and New York cases, made it clear that no invasion of state power over the matter of jurisdiction of its courts was intended, but only that the courts of the state which by local law have jurisdiction of the causes of action, are not to be permitted to discriminate against entertaining an action merely because it is rested under a federal statute. The prohibition of discrimination was against the court, the local laws allowing jurisdiction and the courts accustomed to enforce it. But the Mondou case, supra, emphatically disavowed any congressional intent "to enlarge or regulate the state courts or to control or affect the modes of procedure."

As above noted, the question of jurisdiction of the state courts is a state matter and not a federal question. This State (so far as concerns this particular case) has limited the jurisdiction of its courts by statute, hereinabove quoted, to causes arising under the "statutes of another state," and we think it clear this language excludes a federal statute. This the State had a right to do, and the Mondou case, supra, discloses that Congress had no intention to invade this authority. We interpret the words of our statute, "statutes of another state," as meaning a statute or law directly passed by the legislature of the state. To hold, as indicated, in the dissenting opinion, that anything in the federal act forces a contrary construction, is but to yield the State power to the federal power, when, as shown in the Mondou case, supra, Congress had no intention to invade such power.

Our statute is plain and unambiguous, and we have given to the language its plain ordinary meaning. To accept a contrary construction merely because of the federal act would but amount to a surrender of the State power in the [fol. 21] matter of fixing the limitation of the jurisdiction of its courts. Congress had no such limitation and made no such effort. In the Mondou case, supra, local laws permitted the action, and the declination of the state court to entertain the suit merely because based on the federal statute was held to be an unwarranted discrimination by the court; but that decision in no manner affects the instant case

wherein this Court is engaged in no discrimination but only construing and enforcing its own statutory provisions. No such question was presented in the Mondou case, and the opinion of the Illinois and New York courts in the cases noted above demonstrate that neither the federal act nor the decision in the Mondou case was intended in any manner to question the authority of the state, through its law-making body, to fix the jurisdictional limits of its own judicial tribunals.

We therefore conclude the original opinion is correct, and should be adhered to.

The application for rehearing is overruled.

Anderson, C. J., Gardner, Bouldin, Thomas and Knight, JJ., concur.

Brown and Foster, JJ., dissent.

[fol. 22] IN SUPREME COURT OF ALABAMA

6 Div. 321

McKNETT

v.

S. L. & S. F.

DISSENTING OPINION ON REHEARING

FOSTER, J., (dissenting):

While I wrote the opinion on the original hearing, my judgment, shared in by Justice Brown, then was that the interpretation given section 5681, Code, was not the best, but the majority of the Court did not agree with us and we concurred in the construction given it by them.

Our attention is now called to the holding that one whose claim is under the Federal Employers' Liability Act must be held to stand in no different attitude in respect to his right to maintain suit in a State court than one who brings his action under the statute of a sister state, for "He may not be cast out because he is suing under the Act of Congress," and "He may not enforce his rights merely because he is suing under the Act."—Murnan v. Wabash R. R. Co., 246 N. Y. 244, 158 N. E. 508.

It was also said by the United States Supreme Court in Mendow v. New York, N. H. & H. R. Co., 223 U. S. 1, 56 L. Ed. 327, in respect to the right of a litigant to maintain suit in a State court upon a claim which arose under the Federal Employers' Liability Act: "We conclude that rights arising under the Act in question may be enforced as of right in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion," and held further that in state "courts of general jurisdiction empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction, not only in cases where it arose under the laws of that state, but also in cases where it arose in another state, under its laws, and in circumstances in which the laws of Connecticut [the state in which suit was brought, different from that in which the action arose] give no right of recovery, as where the causal negligence was [fol. 23] that of a fellow servant," cannot withhold its jurisdiction of an action which arose in another state under the Federal Employers' Liability Act. This conclusion and result were given effect in Walton v. Pryor, 276 Ill. 563.

I think it would be an unwarranted discrimination to construe our statute so as to open the doors of our State courts to torts committed in another state which exist by virtue of the common law of that state or of statutes enacted by its legislature, and shut the door against those which exist in that state by virtue of an Act of Congress, there effective, unless the language of the law can have no other meaning.

It was said in Claflin v. Houseman, 93 U. S. 136, 137, 23 L. Ed. 833, 838-9, that "The two together, (the laws of the United States and those of the state) form one system, which constitute the law of the land for the state," cited in Mondou v. N. Y., N. H. and H. R. R. Co., supra.

Again it has been held by the same court that an enactment to which the state gives the force of law is a statute of that state though not originating in its legislature.—Williams v. Bruffy, 96 U. S. 176, 183, 24 L. Ed. 716; N. O. Water Works Co. v. La. Sugar Ref. Co., 125 U. S. 18, 31 L. Ed. 607.

For those reasons I cannot accept the theory that section 5681, Code, does not here have effect.

Brown, J., concurs in the foregoing dissent.

[fol. 23a] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

6th Div. 321

ROBERT J. MCKNETT

vs.

ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY

JEFFERSON CIRCUIT COURT

JUDGMENT OF AFFIRMANCE—June 9, 1933

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant and Walter Brower and G. H. Greene, sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their right of exemptions under the laws of Alabama, let execution issue accordingly.

[fol. 24] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING—Oct. 12, 1933

The application for rehearing heretofore filed in this cause, being duly examined and understood by the Court, it is considered and ordered that said application be and the same is hereby overruled.

[fol. 25] Bond on petition for certiorari for $500.00, approved Nov. 4, 1933, omitted in printing.

[fol. 26] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 27] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 4, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: In Forma Pauperis. File No. 38,200. Alabama Supreme Court. Term No. 597. Robert J. McKnett, petitioner, vs. St. Louis & San Francisco Railway Company. Petition for a writ of certiorari and exhibit thereto. Filed November 20, 1933. File No. 597 O. T. 1933.